

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

VANCE L. WEIGE,

CV. 11-6092-MO

Petitioner,

ORDER DENYING MOTION  
TO DISMISS

v.

JEFFREY THOMAS,

Respondent.

MOSMAN, District Judge.

On March 18, 2011, Petitioner filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. Respondent's Motion to Dismiss (#11) is before the Court. For the reasons that follow, the Motion is DENIED, and Respondent is ordered to file a Response to the petition within five (5) days of this Order.

**DISCUSSION**

Respondent correctly states Petitioner's sentencing date as January 14, 2009, when presenting the procedural history in the

Motion to Dismiss. However, Respondent's argument that Petitioner is ineligible for early release under *Arrington v. Daniels*, 516 F.3d 1106 (9th Cir. 2008) because Petitioner was convicted *after* the March 16, 2009, effective date of new governing regulations is based on a factual error.<sup>1</sup> Respondent also argues, in the alternative, that the 2009 regulations are valid under the Administrative Procedures Act (APA), citing this Court's decision upholding the 2009 regulations, *Moon v. Thomas*, 2011 WL 1299606.

On September 30, 2011, Petitioner filed a Response in Opposition to Motion to Dismiss (#27), seizing on the factual error in Respondent's argument. Petitioner argued that because Respondent attributed his ineligibility for early release to his being convicted after March 16, 2009, he was necessarily eligible for early release based on his actual sentencing date, January 14, 2009.

On October 21, 2011, the Court ordered Respondent to file a Reply within 30 days (#28). Respondent did not comply with the Court's order. Petitioner's arguments in opposition to the Motion to Dismiss have, therefore, not been addressed. Accordingly, Respondent's Motion to Dismiss is DENIED.

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<sup>1</sup>In *Arrington*, the Ninth Circuit invalidated BOP regulations limiting early release eligibility under 18 U.S.C. § 3621(e)(2) on procedural grounds under the Administrative Procedures Act.

**CONCLUSION**

Based on the foregoing, the Motion to Dismiss (#11) is DENIED. Respondent is ORDERED to file a Response to the petition within five (5) days of the date of this Order, addressing the arguments Petitioner has presented. No requests for extension of time will be considered.

IT IS SO ORDERED.

DATED this 17th day of January, 2012.

/s/ Michael W. Mosman  
Michael W. Mosman  
United States District Judge